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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,278	05/05/2006	Eric B. Michalak	026032-5038	2120
23428 7590 10/06/2008 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
EXAMINER				
GARRETT, ERIKA P				
ART UNIT		PAPER NUMBER		
3636				
MAIL DATE		DELIVERY MODE		
10/06/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/578,278

**Applicant(s)**

MICHALAK ET AL.

**Examiner**

ERIKA GARRETT

**Art Unit**

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-14 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 2-3, 5-6 and 13-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.
3. In claim 2, the phrase "upper portion can flex about the pivot until contacting the upper end of the back frame" is not described in the specification.
4. In claim 5, the phrase "the side bolsters are aligned with the compliant back such that the compliant back can be moved clear of the side bolsters", not described in the specification.
5. In claim 13, the phrase "the second portion is slidable connected to the seat back frame". It is not clearly described in the specification how this is slideable connected. paragraph 0026 on page 7, states that the glide blocks 66 are slideable and pivotally connected. However it is not clear how they are "slidable" connected, this is not explained.
6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
8. Claim 16, the claim it depends from is missing. The examiner assumes it depends from a claim based on page 6 of the remarks.

### ***Double Patenting***

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-14 and 16 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 18-49 of U.S. Patent No. 7,237,847 in view of Hama (5,582,459). Patent 7237847 claims the seat back, back frame, and

compliant back, however does not claim rollers. Hama teaches the use of a biasing member having a first end including rollers (37, 39) aligned and operatively engages the compliant back member (14). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the seat with slides and a motor as taught by Hama, in order to change the position or location of the seatback and better support the compliant back member.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-14 and 16 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Hancock (WO 03/068557) in view of Hama (5,582,459). Hancock discloses the use of a seat (10) for use by an occupant comprising a seat base (12) configured to be supported in the vehicle; a back frame (40) including a first transverse member (44), a first side member (41) and a second side member (43), wherein the first transverse member interconnects each of the side members at a location toward an upper end (45) of the back frame, the back frame further including a second transverse member (46) interconnecting the first and second side members a spaced distance from the first transverse member; a compliant back (60) member having a first end operably connected to the first transverse member and a second end

operably connected to the second transverse member. The compliant back is coupled to the second transverse member by at least one pivot member (pair of pivots 68) such that the upper portion (62) of the compliant back extends in a cantilevered fashion over the upper end of the back frame and a spaced distance from the back frame, wherein when the occupant in the seat leans into the upper portion of the compliant back, the upper portion can flex about the pivot until contacting the upper end of the back frame, see column 7 lines 5-15. Further including a side bolster (18), with one side bolster coupled to each of the first and second side members of the back frame and extended from the side members. The side bolsters are aligned with the compliant back such that the compliant back can be moved clear of the side bolsters. The biasing member (100) is coupled to at least one of the side members and the lower portion of the compliant back. The biasing member includes an adjuster to vary the tension in the biasing member to effect tension in the compliant back. The biasing member includes at least one spring (102). Lateral support member (120) interconnecting the first spring member and the second spring member.

13. Hancock fails to show the use of biasing member having a first end including rollers aligned and operatively engage the compliant back member.

14. Hama teaches the use of a biasing member having a first end including rollers (37, 39) aligned and operatively engages the compliant back member (14).

15. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the seat with slides and a motor as taught by Hama, in order to

change the position or location of the seatback and better support the compliant back member.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIKA GARRETT whose telephone number is (571)272-6859. The examiner can normally be reached on Monday-Thursday 9:30 a.m.-6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. G./

Examiner, Art Unit 3636

/DAVID DUNN/

Supervisory Patent Examiner, Art Unit 3636